EMPLOYEES' GUIDE

Contents

INTRODUCTION

Every employee need to know his rights at work for him/her not to be exploited by an employer. Through the knowledge of labour laws the employee will be able to know what is due to him/her. Below are the various subjects that will assist an employee in dealing with the labour related problems that he/she may encounter during her/his employment.

PROTECTION OF INDIVIDUAL EMPLOYEE'S RIGHTS AND INTERESTS

The provision under the law is very much in line with the international labour standard such as:

- Minimum employable age is 16
- Equal wage, must be paid for work of equal value without regard to sex, age, race or religious belief
- Wage payment must be in cash on regular and specified date not longer than one month interval. Minimum wage rates must be observed. Wage deduction is forbidden except for purposes of social security, tax, provident fund, and union due.
- Work hours per week cannot exceed 48 hours, with the maximum of 8 hours per day.
- Paid sick leave may be for a period of six months.
- Maternity leave is a minimum of 90 days. Employers provide full pay.
- Annual leave should be granted with full pay. Employers have a right to assign such leave. Untaken leave must be compensated in wage term.
- Overtime and Holiday work. Employee may refuse to work outside normal working hours.
- Safety and health. There is an increasing concern for safety and health, and work environment as an integral part of the law, and also in separate relevant legislation.
- Sexual Harassment. Sexual harassment is prohibited.

- Sexual Equality in Employment. Discriminatory treatment based on sex is forbidden.

- Protection of workers' rights and interests in case of takeover or merger. New employer is obliged to maintain all rights and interests i.e. employment conditions of employees of the firm that is taken over.

- Severance payment. Termination of employment requires severance payment from employer unless it is a termination related to employee's serious disciplinary offence. Retirement is also counted as termination. The amount of severance payment varies according to employee's length of service.

- As redundancy payment is understood to be severance payment, termination of employment without serious fault on the part of employee necessitates the payment, even for employee leaving on retirement age, or because of chronic illness or poor performance.

  Those to be terminated, except for serious disciplinary matters, must be notified in writing for a period not shorter than one pay period, or else they shall be given wage in lieu of such advance notice. This clause applies also to employees during probation.

  Special severance payment to be given to:-

  - Employees who are made redundancy by the employer's replacing them with modern technology

A workplace with more than twenty-five employees must register with the Labour Commissioner for purposes of unionism

EMPLOYEES LAWFUL RIGHT TO DISOBEY'S EMPLOYER'S ORDERS

To minimize disputes and staff problems, the management should review the employment policies and procedures. The authorization approach firmly holds

on the concept of “The Boss is Always Right”, the century old heritage from the industrial revolution era.

Employer’s disciplinary obligations as stated in company’s employment regulations and employment contract **to obey superiors orders** are continually questioned and challenged at the work places as well as in the court of law. Oftentimes, employees won.

The court ruled time and again that such orders to be complied must be lawful. The employer may punish employees if the latter disobeys lawful and just orders.

What is a lawful order?

The order must be related to the job a person is employed to perform, and not an infringement of any individual’s natural, and lawful rights. For example, employees may object to work outside certain areas, or for people other than the employer as specified in the contract, or for other duties not covered in the job description.

Employer may refuse to stay on after hours to work overtime, or refuse to come to work on his/her day off despite the extra pay. Such refusal could be costly or damaging to employers who have to meet purchasing orders. Trade unions use **“Overtime Ban”** as effective bargaining power.

What are orders which infringe upon employee’s individual rights?

They are orders for body search, house or car search, confinement to certain area unrelated to the performance of duties, pregnancy test, drug test, etc.

But if explanation is clearly given as to the reasons to carry out such activities, most employees would gladly comply. The important thing is that employer may not punish them for every non compliance. There are ways to persuade, as well as to pressure employees to comply to such exceptional orders.

What about the search of employee’s lockers, drawers, dormitories, etc which are company’s properties made available for employee’s use? Employers have the right to search them but in the presence of the employees responsible. This is similar to checking email, internet that are available for work. Employers hold property right to the assets.

Employers may inspect employee’s email or internet communication on the ground of the right of ownership of the computer. But the employees may insist on their privacy, and confidentiality.

Job transfer order is another issue. If it is not done in good faith, i.e. moving him/her to inferior position (demotion), to a job he does not have applicable knowledge or skills, or to places where he/she will face hardship or danger, employee may have valid reason to resist or refuse. The employer's right to manage may not hold. It may be termed as unfair practice, or a constructive termination, i.e. providing an exit to unwanted staff.

What unusual actions may employees take against employers?

1. Employer may forbid employees from entering their work places, as long as wage continue to be paid on fixed date.
2. Employer may read out warning letter and have witness to sign it when the wrongdoers refuse to acknowledge their faults.
3. Employers may restrict employee's right to work somewhere else in some occupation for a few years afterwards i.e. non competitive employments agreement, or to forbid the disclosure of confidential information.

1.0. VARIOUS COMPENSATION PAYABLE TO EMPLOYEES

Employees are entitled to many types of payments from employers.

We present here 3 types of payment due to employees' i.e.

1. Compensation lawfully due to employee.
2. Other payment agreed by employers in addition to the law.
3. Payment after ending employment.

1. Compensation lawfully due to employee because of work.

Most important in this category is the payment in return for work, i.e. wage, overtime on regular workdays as well as on days off, and holiday work pay.

The law requires the payment of wages at least once a month. In case of redundancy termination, employer has to give written notice of employment termination not shorter than one pay period, or wage payment in lieu, plus severance payment, and wage in lieu of unused vacation.

2. Payments greed by employers in addition to those required by law.

Some of the payments are initiated by employers to compensate for difficult work environments, or to motivate employees to improve productivity. The unions may also propose some forms of payment to negotiate with the management. Examples are allowances for shirt work, hazardous or isolated work, transportation, meals, lodging, cost of living, bonus, service charge (hotel and restaurant).

Once criteria for payment are set by employers or by agreement with the union, compliance is required. Changes negatively affecting employees require employer's written consent.

3. Payment after ending employment.

There are some other payments due to former employees, e.g. reinforcement of expenses incurred to employees for the execution of duties, the return of surety money in the indemnity contract, monthly or yearly pension (if applicable). Sale commission payable upon full collection of payments for goods sold by former employees is also to be paid to the salesperson concerned.

All kinds of compensation due to employees should alert employers to carefully consider whether it is worth while employing more people than necessary. Some actions are taken as follows: -

1. Improve efficiency in the management of human resources.

Starting with changing in work procedures, employing people who have potential to learn o do more and better, paying attractive compensation, spacing payments of different types, and continuous staff development.

2. Change employment policy and practice.

Certain industries have mixed supply of labor comprising directly employed staff, and those employed and supplied by outsiders. He unskilled casual workers often cause defects to be rectified thereby delaying delivery. Yet the use of outsourced employees is growing everywhere.

Entrepreneurs, who wish to see their employees get work on time, and work hard beyond the set hours, should start with themselves paying employees the agreed compensation on time.

2.0 FIXED PERIOD EMPLOYMENT CONTRACT MAY BACKFIRE

Employers may choose to offer employees either of the 2 different employment contracts, i.e.

1. **An ordinary employment contract** has an **"open end"** nature. It may specify compensation as hourly, daily, or monthly. Termination date is not specified but commonly understood to be by retirement, death, resignation, or termination with or without severance payment; or
2. **A fixed period employment contract.** It is also called a project employment contract to identify with employment for non core, or seasonal nature of work. The probation part of a contract does not turn an ordinary contract into a fixed period contract. This type of contract has certain rigidity i.e. indicating starting and ending date, no provision for early termination or extension.

Why do many employers enter into a fixed period employment contract?

1. Multinational companies (MNCs) and Joint Venture Firms (JVs) and expat executives have work plans and work requirements for different types of personnel's who also do not want to be in any country for unknown period of time.
2. Certain types of work need specialists only for short periods, e.g. construction, machinery installation, exploration of oil and minerals, etc.
3. Employees intend to avoid severance payment at the end of work.
4. Employers want to prevent employees becoming members of trade unions.

Why do employees agree to work for fixed period of time?

1. Some employees have no bargaining power and make any offer.
2. Compensation is often higher for work of short duration.
3. Young people are not bound by jobs and location.
4. Employees know that they could, in fact, break the contract and leave any time better job comes along, and that there is always a chance of renewing contract.
5. No Choice because of high levels of unemployment

What are the problems related to fixed period employment contract?

1. If the employer terminates the contract before the set date, he is held in breach of contract. Employee may sue for damage equal to the income foregone for the remaining months (if it was an oral contract). If the Labor

Court rules that it is an ordinary contract, then severance payment must be paid and possibly compensation for damage as well.

2. On the contrary, if the employee breaches a contract and leaves before the end of the contract there is nothing the employer can do.

2.0. A SAMPLE OF EMPLOYMENT CONTRACT.

Employment Contract

The agreement is made on this…….between (name of company) whose registered office is at…….hereinafter called the company, and (name of employee) whose address is…….

hereinafter called the employee.

Now it is hereby agreed as follows

1. The company shall employ the employee effective as of (date)…….
2. Either party may serve an advance notice giving to the other not less than 30 days written notice to terminate employment.
3. The normal retirement date for employment is at full 55years of age.
4. Annual leave days shall accrue at the rate of atleast 2days per complete month of service
5. Sick leave shall accrue at the rate of ……
6. The employee shall:-

    4.1 Faithfully serve the company, giving at all times the full benefit of the employee's knowledge, expertise, technical skill and ingenuity.

    4.2 Perform such duties and exercise such powers in relation to the business of the company as assigned or communicated to or vested in the employee by the company.

4.3 Obey all lawful instructions given to the employee by or on behalf of the company and comply with all rules and regulations now or hereafter made by the company in connection with the conduct of the company's business.

4.4 Be responsible for the performance of the employee's duties to the (title of superior).

4.5 Devote the whole of the performance of the employee's duties to the execution of the duties.

5. The company shall:-

5.1 Pay to the employee a salary at the rate of Kwacha……per month such salary to accrue from day to day and to be payable in arrears at the end of each calendar month;

5.2 Annually review the employee's salary to reflect the contribution made by the employee to the company, and development of its business

5.3 Include the employee in the company's provident fund toward which the employee and the company will each contribute according to the company's provident policies

5.4 Include the employee in the company's medical and life insurance policies.

6. The employee agrees to work at and during such times and on such days as the (job title) of the company or as may otherwise be required from time to time, for the purposes of the business of the company.

7. Since the employee is likely to obtain in the course of employment confidential information, trade secrets and know-how in relation to the company and its business affairs, and customers, the employee hereby agrees with the company to be bound by the following restrictions:-

7.1 The employee will not during the employment or at any time……months thereafter (except in the proper

course of the employee's duties or unless ordered to do so by a court of competent jurisdiction or unless such information comes into the public domain) without the consent in writing of the company being first obtained use or divulge to any person, firm or company (and shall at all times use best endeavors to prevent the publication or disclosure of) any information concerning the business, products, know-how, technology, accounts, finances, clients or customers of the company or any of the secrets, dealings, transactions or affairs of the company.

7.2 The employee will not during the employment or for a period of ……months thereafter within Zambia solicit in competition with the company the custom or business of any person, firm or company who at any time during the employment was a customer or client of the company or who at that date of termination of this agreement was negotiating with the company whether or not such person would commit any breach of his contract of employment by reason of leaving the service of the company.

8. Upon termination of the employment the employee shall forthwith surrender all original and copy documents including computer discs, magnetic media, and etc.or other items belonging to the company.

9. The employee agrees that copy rights of work, innovative invention, development of computer programs or others specified in the law or future amendments thereof if carried out or completed while in the due course of employment utilizing time , money or company's equipments will belong to the company.

10. The employee will not lay false claim to work of others which may cause the company to be implicated infringement of Copyright laws.

11. In addition to the aforementioned clauses, the company and the employee accept the provisions of the labour laws and company's employment regulations as apart of the agreement.

In witness whereof this agreement has been executed the day and year first above-written.

Signed by…….

On behalf of the company ( )

In the presence of :……(Witness)

Signed by……..

The Employee ( )

In the presence of :……(Witness)

AN EMPLOYMENT TERMINATION THAT NEVER WAS

Question I was given a very good employment offer. I signed the confirmation, left my job and readied myself for the challenge. Then came a letter canceling the offer. Can I sue my new employer for damage, now that I become unemployed?

Answer You have not started a new job. There is no termination of employment, only a cancellation of an employment offer, probably an employment contract. Obviously you are not entitled to any severance payment. New employment has not started, and thus there is no termination of employment. When there is no dismissal, there is no severance payment, no case for an unfair dismissal.

You may not be able to prove that there was a collaboration between your ex employer and your would be new employer to get you out of job without paying anything.

But check the employment offer which you have accepted and countersigned. There may be a clause stating that the contract may be terminated by either party serving a written advance notice not shorter than 2-3 months. Then sue the company for a breach of contract calling for compensation for damage. There is a chance the Labor Court would order the payment equal to salary in lieu of the advance notice period.

In the worst case scenario, what you signed may be just an employment offer, and not the contract. The other party may even argue that the case is not in the jurisdiction of the Labor Court.

There are cases where some people resigned from their current job even still in the final stage with the headhunters. On the other hand, a few people use their

accumulated paid vacation to try it out on a job. After 2-3 weeks of adjusting on new work environment, they go back to tender their resignation with immediate effect.

That is why a long paid vacation takes place after bonus payment. January is the time for appointment and transfer.

3.0. VALIDITY OF RESIGNATION

Question How could it happen that an employee who already tendered his resignation letter was fired for neglecting his duty?

Answer In fact resignation takes effect when the intention is made known even verbally. There is no need for anyone to allow or disallow our resignation, even without the required advance notice.

An employer should also be happy that no severance payment need be paid. Yet termination or dismissal could still happen to employee who already tendered his resignation letter. Consider the following scenario:-

Serious wrongdoings were discover necessitating a dismissal order to deny the employee his benefits such as bonus, provident fund, wage in lieu of untaken annual holiday, etc.

The resignation letter, or verbal statement of resignation was addressed to superior who is not the authorized person of the company. When such resignation notification is not processed to the right channel and the employee stops reporting to work, he could easily be dismissed on the ground of neglecting duties for 3 consecutive work days without a valid reason. This is especially true when his absence from work is damaging to the company.

For a cessation of employment contract, the law requires an advance notice from either employer or employee of at least 24 hours for a probationary employee and one month for a confirmed employee. Both Employers and employees have to provide wage in lieu if there is no advance notice.

4.0. RESIGNATION: THE UNDENIABLE RIGHT

Question Does an employee have to wait for approval of his resignation before taking up a new job?

Answer Resignation of staff could be damaging especially when it happens en masse, or when key personnel switch over to the competitors. That is why some employers come up with conditions that help to delay or discourage staff

turnover. They have proved to be ineffective. Employees have the right to leave and there is little employers can do to stop them.

Some employers put in their employment regulations, and/or the employment contract that employer's approval is required for the resignation. It does not work. Resignation letter serves to inform the employers of the employee's desire to leave on a certain date. How should employer approve or disapprove the exercise of other people's right?

Some employers require many months of advance notice in writing for the resignation to take effect. Yet no employer can do anything if an employee simply leaves at short notice.

Some employers set a minimum period that employee must work after receiving expensive overseas training or compensate employer for the training cost. A breach by employee leads to litigation – not always successful.

Some employers make it difficult for employee to resign when they put restrictions on their key staff against working for themselves or for other employers in same trade for a number of years in certain locations. The non competitive employment clause is lawful, but difficult to enforce when litigation at the Labor Court outlasts the restrictive period.

It appears unfair that employers are bound to give employees advance notice of at least one pay period, or compensate with wage payment when advance notice is not possible or desirable. There must also be reason given, otherwise employers are liable for compensation for damage on unfair dismissal, on top of the severance payment.

On the contrary, employers are powerless when employees want to leave. They simply stop coming to work, without any concern to put in a resignation letter. It is plain truth that employers have no right to keep employees at work against their wish. A provision in the regulation of the Provident Fund may serve as a deterrent against such irresponsible behavior. State in the PF regulation that employee who resigns without giving advance notice will not be eligible to receive the employer's part of the provident fund.

A brief answer to the question is "No, there is no legal requirement for an employee to have his resignation approved by the employer. Employee has full freedom to walk away from his job. But an employer may take up litigation seeking compensation for damage caused by the sudden desertion of duty"

LITIGATION ON THE BREACH OF EMPLOYMENT CONTRACT

It is a contractual relationship, verbal as well as in writing between an employer and an employee, not the same as between a contractor and a service provider.

It is advisable to institutionalize employee-employer relationship into a written document referred to as an employment contract to minimize misunderstanding and abuse. Make sure that it contains no provision in breach of the law as it would become unenforceable.

In addition to the contractual provision, written or verbal, some other things whether specifically referred to or not also form a part of contractual relationship between employer and employee. They are the laws, the company's employment regulations, and collective bargaining agreement (in case of a unionized work place). A breach of any of the above leads to litigation in the labor court.

Despite a full awareness and compliance with the company's own rules (registered with the Labor Registrar as required by section 108, Labor Protection Act B.E. 2541), observation of the law and union agreement, one may be found in breach of the law, or the contract, an ordered to compensate the employee. Reasons are: -

1. He employment regulations registered with the Labor Department contains incorrect provisions which were not corrected during the registration. Examples of faulty provisions are "**employer may terminate employee during probation without giving advance notice."** Or **"notice of employment termination is one month."** Both as well as many other clauses are incorrect.
2. Misrepresentation of the law and the regulations. Examples are not paying wage in lieu of untaken vacation, or paying wage in lieu of **one month notice.**
3. Neglecting or delaying implementation of agreement made with the union.

Employees are also found to breach the contract in many instances. Most people sign anything upon acceptance of job offer, but later abuse it. Employees who found themselves at a disadvantage when employers rigidly observe their contractual obligations lodged complaints at the Labor Court voicing their disagreement. In many cases, the contracts are found to be unlawful. Examples of unlawful provisions in employment contract are: -

- Different retirement ages for men and women employed to perform similar jobs.

- Restriction against pregnancy.
- Non competitive employment which has no limit of time and place.
- Waiving employee's right for overtime payment because extra hours/days have been factored into high monthly salary.
- Agreeing in advance to work outside normal hours anytime.
- Agreeing to comply with employer's orders even when they are unrelated to work, etc.

There is need for farsightedness and flexibility when writing company's employment regulations, and employment contract. When there is no provision for change in work hours, companies may find it impossible to put employees on shift work, as it requires them to work night hours and rotating regularly.

Most litigations at the Labor Court are related to the breach of employment contract, intended or otherwise by both employer and employee. Initially, the complaint may be lodged with the labor officer.

Either party may disagree with the decision and seek the labor court's order for revocation of the decision. Even after the Labor Court has decided, an appeal on the point of law may be lodged with the High Court.

ABUSE OF EMPLOYEE'S PRIVACY

Question Is it an abuse of employee's privacy for employers to state in the company's regulations that pregnancy must be notified?
Will non compliance lead to disciplinary action?

Answer It is definitely an infringement of an individual's rights of privacy, but mainly for a good cause.

Employers are forbidden from terminating employment because of pregnancy. Employees, however, want to keep their pregnancy confidential for some period of time for reasons such as

- Probability of employment termination
- Probability of pregnancy termination
- The loss of overtime work and the overtime pay

The fear for employment termination is not groundless. Look at the number of married women who apply for work with the marital status as **"single"**. In fact the 90 days maternity leave is applicable to both married and single women. Yet employers are not happy to give away 90 days full pay and 90 with half pay.

With a letter from the medical doctor, employers are required to transfer or reassign pregnant employees to work which will not be hazardous for health of the expecting mother and the child – not always easy to arrange.

Employers cannot put pregnant employees to work outside regular hours-making shift arrangement more complicating.

After maternity leave employers have to put the women back to her original job and original employment conditions.

With all those requirements, it is necessary that employers know which female employees are pregnant. There are instances where

- An expecting mother had a miscarriage because she was left handling the work which normally required two persons.
- An expecting mother gave birth while on duty in the production line.
- A young woman suing the employer for terminating her, allegedly knowing her pregnancy.
- An IR manager counseled the pregnant worker to consider keeping the job or keeping the baby. It is considered an advice for an abortion.

Though the company's regulations stiffly mention disciplinary actions against non-compliance, a pregnant employee may cling on to her right of personal privacy to ward off disciplinary action. A consolation to employer when untoward incident occur to pregnant worker at work is that the employer has no knowledge of the pregnancy.

WILLFUL ACTION TO CAUSE DAMAGE

Actions taken by an employee, whether related to work or not, could cause damage to the employer. The damage may be willful as well as accidental. This is why some companies require employees to have a guarantor or surety agreement to compensate for damage caused by employee. Remember, however, that the law allows surety arrangements for a few types of work only, e.g. those involving the safeguarding or handling of valuables at risk such as cash, vehicles, etc.

Look at the case of a commercial bank branch manager approving loan to a customer, and the loan becomes a bad debt. Such damage is caused by the performance of his duties. If his performance is in full compliance with the established rules and practices, he could not be faulted.

On the other hand, the banker may be involved in other businesses and become heavily indebted leading to a bad reputation for himself and the bank

be manages. The damage is caused by his activities unrelated to the task he is paid to perform.

An employee in a company's work form protesting in front of factory gates outside work hours as a part of industrial action is not to be disciplined on the charge of willful action to damage the company. If that worker, however, appears in public o on television show in company' work form, what he says may be actionable in court as causing damage to the employer. This depends on circumstantial evidence, and the attitude of the judge.

Causing damage is a serious disciplinary wrong punishable by employment termination with or without compensation depending on whether the action is willful or not. If the damage is the result of employer's negligence, arbitrary dismissal depends on the magnitude of the damage itself. If the damage is small, the negligence calls for verbal or written warning only.

An interesting point is that **"a willful action to damage"** could lead to arbitrary dismissal, regardless of whether there is damage or not. An employee circled the plant throwing rocks, bottles at the walls ad the gate of the plant was dismissed for his efforts to cause-even when there is no damage.

Another employee is smoking near the storage of flammables, alongside the signage **"strictly no smoking"** he may be dismissed for breaching a serious disciplinary provision, but not on the ground of **"a willful action to damage".**

Before imposing disciplinary action, there must be a fair hearing. A hasty decision against low rank staff often allows senior managers to go off the book. It may result in an unfair dismissal charge too.
There have been cases when financial institutions dismissed managers and credit officers. After hundreds of millions of baht in damage were detected over the spade of many years of repetitive wrongdoings, the dismissal note stated **"willful action to damage the company".** The dismissed employees were successful in proving that their action were damaging but not willful. Their superiors never raised objection, and even rewarded them for the amount (not quality) of work. The employer, for some rime, also benefit from their work in the form of income and growing market share.

It is advisable to dismiss unscrupulous financial staff on failing to observe established procedures of good governance, or dishonest conduct of duty, or carelessness in the performance of duty causing serious damage.

During he course of many years of work, internal audit work should have detected wrongdoings. Warning letters should have been given to provide the lee way for arbitrary dismissal without compensation, and even legal action to salvage the loss.

Even pregnant workers ma be laid off, if the company cannot operate with excessive redundancies. Other staffs whether union leaders or not may be transferred or reassigned even during the height of the negotiation process-as long as the transfer is not intended to obstruct the collective bargaining process.

Employees cannot hide behind the trade union when committing faults. Some have learned to be subtle in discriminating between friends and foes without getting caught as engaging in unfair or anti union practice. Trouble makers may be kept as long as wages payment continues as normal. Those, taking part in overtime ban, find their names stuck out from future overtime assignment.

Willful action to damage could be either way, and only women union-management relation.

LAWFUL AND APPROPRIATE RESIGNATION

Unlawful and appropriate resignation may cause damage to employer as well as employee or both. We are alerting readers on potential problems along with some management guidelines.

Resignation is appropriate when the resigning employee fulfills lawful provisions act forth in the employment resignation, the employment contract. Though giving up work is an individual right undeniable by the employer (who even put in writing his authority to approve or disapprove), it is pertinent that employee realizes the potential damage from the exercise of his right.

Resignation procedure to follow: -

1. **How to resign:** Resigning is effective just the same verbal or in writing. It could be in the form of a personal note, or official personnel form, stating the date of the notification and the proposed effective date, reason or no reason makes no difference. Contractual relationship is over on the date set, after returning company's equipments, documents, etc. Approval or no approval is meaningless. It is advisable to keep a copy of the resignation letter as evidence of having fulfilled necessary and lawful procedures.

2. **When to resign:** Normally employee leaves after the assurance of a better job, after receiving the bonus, and after giving the necessary advance notice.

   Failing to give advance notice as required may lead to litigation for damage. Employer has to be specific on the compensation he wants to demand from employee. He cannot simply withhold payments due to departing employee.

   It is advisable to link the obligation for appropriate resignation to the benefits. Employee who resigns after only a few years or given sufficient advance notice of resignation will receive partial or none of the company's contribution.

3. **Who to hand in the resignation:** Resignation is to be notified by an employee to the employer or management personnel with the authority to hire i.e. senior manager, or HR manager. A resignation letter has to be handed to such person. Dates and signatures of the people involved should be affixed to witness the separation procedures.

   Keep a copy for reference. Without a resignation letter, and the disappearance o witnesses, it could be a desertion of duties. Benefits under the social security or provident fund may be lost. There may be allegation of not returning important documents or equipments,

   What should employer do when receiving resignation letter?

   Good employers care how employees recruited to work adjust themselves to work environment, whether they receive proper counseling from their work mentors and associates, on top of the HR briefing. Thee must be a standing order for HR Department to conduct an exit interview to find out real reasons for leaving, the frustration or disappointment, and the likes. Correction of the existing ill treatment at the last minute could stop good staff from resigning.

   Some organizations established a separation or demobilization procedures so still that departing staff vow never to return. For example;

   1. Employee is instructed to stop work immediately, return equipment and ID card. Payment continues till set date, and the interim period treated as paid vacation; or
   2. The proposed effective date is changed to "**immediate effect".** This angers employee who goes to the Labor Court and demand severance payment plus compensation for damage; or
   3. Some employers ignore the resignation. Business goes on as normal well passing the proposed effective resignation date. Then after a replacement

comes in, employee is told to leave. Employee sues successfully for compensation.

Absence for unknown cause after payday – a de facto resignation.

Many employees stop reporting to work after payday, especially after annual bonus or after new year celebrations. It is not always a de facto resignation. Beware of possible litigation during the subsequent 10 years. The long forgotten employee may have a plaint at the Labor Court that he was fired verbally for no wrongdoing, and without compensation.

The employer may dismiss employee who neglects his duties for 3 consecutive work days or more without a valid cause. Employer is duty bound to find out the reason.

Send a pre registered mail o the employee telling him to report to work and to explain his absence if he still wants to work.

The hasty decision to remove anyone from the payroll without having a resignation letter, or a termination letter with cause is inviting trouble.

As for the employees, it is not enough just to comply with the law and regulations. They have to be accountable for company belongings. Equipments and documents must be returned. Or else the security guard will follow the instruction never to allow them to proceed beyond factory gates.

5.0. NECESSARY PROCEDURES FOR DISCIPLINARY ACTIONS

Reward and punishment have stood the test of time as an effective instrument for people management. This is the authority vested in the management. It must be exercised fairly and consistently, with due regard to the law, the company's regulations, employment contract, and collective bargaining agreement made with the union. Complaints made to labor authorities, the Labor , and the Labor Office are all related to abuse of authority. Harsh and consistent measures led to resentment, accumulated grievances, which occasionally exploded into protest rallies, and work stoppages, as well as all forms of industrial actions, such as a go slow, overtime ban, work to rules, etc.

Eventually trade unions emerged to act as a permanent organization to protect and advance members' rights and interests.

What are important elements of fairness and consistency?

1. Employment regulations, contract, union agreement and labor laws.
2. Established procedures.

I. Employment regulations must have provision for code of behavior and disciplinary action.

Enterprises employing persons are required to put their employment conditions in writing, display it for all to see. Employees are bound to observe work hours, attendance and leave procedures, code of conduct, etc and disciplinary actions in case of breach.

Employers shall treat employees without prejudice, in line with established procedures. Wrongdoers have to be disciplined, but clear and conscious counseling to staff as to what are required of them will keep disciplinary actions to the minimum.

II. Procedures for disciplinary action

Staff suspected of wrongdoings shall be treated as innocent until proven beyond doubt of his/her part in wrongdoing. A fair hearing must be arranged so as to provide him the right to be heard. Both causes and consequences, not either one, must be thoroughly considered. Two stages of action are recommended;

2.1 Fact Finding. This can be formal, as well as informal depending on the seriousness of the case. Work unit involved and Human Resource Dept. will gather and discuss circumstantial evidence, motif, behavior, etc. it ma end up with counseling by supervisor, or HR manager, or a verbal warning.

If the wrongdoer involves other work units, or persons, or a repetition of earlier offence, or of a more serious stature, a fact finding team may be assigned to review the case. It may be necessary to suspend work of the staff under investigations.

2.2 Imposing penalty. The finding team (comprising HR department, work unit of the accused staff, and representative from other work unit) may propose disciplinary action along with the findings. If a verbal warning suffices, pass the recommendation to supervisor in charge. In case of a strong penalty such as a written warning the

HR department manager should co-sign the document with relevant department manager to assure full compliance.

A dismissal without any compensation (section 119) is rare, and need close scrutiny before submitting a dismissal letter to the highest authority or his/her designate.

It is advisable to offer a wrongdoer a graceful exit i.e. a resignation.

In conclusion we recommend;

1) "**Fair hearing"** and careful consideration by impartial authority before imposing disciplinary action.
2) Amendment of company's employment regulations to provide for employment suspension during investigation work, and as a penalty short of dismissal.
3) Insert provision for termination of employment with severance payment, in case the wrongdoings do not justify a dismissal.

GOVERNMENT'S ROLE IN THE SETTLEMENT OF LABOR DISPUTES

Labor disputes may be discussed in 2 different circumstances, i.e.

1. Individual dispute is between individual employee (s) and his employer regarding a breach of employment law and employment contract. The focus is on employer's rights and interests under the Employment Act
2. Collective dispute is between a group of employees, generally unionized and their employer. This is related to the failure to settle their differences through negotiation to change employment conditions specified in their earlier collective bargaining agreement.

Industrial dispute, individual or collective, could be disruptive and damaging to a smooth operation of industry and trade.

The Government has important role not only in the prevention of dispute, but also in its settlement through compulsory councilors, by labor officers, voluntary arbitration and deliberation by the Court.

Lets use see how labor disputes could be resolved;

1. Dispute between employer and employee. There are thousands of complaints made against employers ranging from default of wage payment, failure to pay for overtime and holiday work, forcing employees to work overtime or on holiday against their consent, breach of employment contract, discriminatory practices, etc. The complaints are the result of ineffective human resource management, and the malfunctioning of the grievance procedures. Aggrieved employees may choose one of the following corrective channels.

   1.1 **Lodging complaint with the Labor Officer** . This may be done verbally as well as in writing. The Labor Department will summon the employer to appear in person for explanation. The Labor Officer may issue an order for employer to take corrective action.

   Employer should detail in explanation in writing, bearing in mind that labor Officer are not acquainted with business or industrial operations.

   1.2 **Litigation at the Labor Court**. Many employees choose to bypass the Labor Office and take their complaint to the Labor Court demanding payment for wage in arrear,-relevance payment, wage in lieu of unused vacation, wage in lieu of advance termination notice, and in some cases, compensation for damage from unfair dismissal. Employers are then summoned to present their side of the story.

   Winning or loosing the case depends on factual information and the expertise in pressing it.

   1.3 **Dispute between employer and the trade union**. This is the most worrisome for many employers who have to negotiate with the unions almost every year. A union, knowing not what else to do, submits a list of demands to seek more of everything. There is always a threat of disruptive actions through a Go-Slow, Overtime ban, and outright work stoppage. The employer's threat of a lock-out cannot be effectively deter the union and members.

Words of Advice. Do not count on mechanism of the state to settle labor dispute! What needs to be done is to develop workable in-house staff-management relation through regular communication and staff participation. Improve your human resource management practice, and

develop a system of regular consultation through mutual respect to replace confrontation and accusation.